

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

STANDING ORDER NO. 04-02
PREFILED TESTIMONY

Applicable to All Appeals Filed with the Committee after January 1, 2004

Effective April 14, 2004, it is hereby ORDERED that:

Prefiled testimony, in compliance with proposed regulation 760 CMR 30.09(5)(d)(1) and Standing Order 04-01, may be required by the presiding officer in appropriate cases.

Parties shall appear at the Pre-Hearing Conference (760 CMR 31.09(4)(b)) prepared to discuss a schedule for filing of prefiled testimony based upon the following guidelines.

Applicant's direct case: within 6 weeks after the Pre-Hearing Conference

Board's direct case: within 12 weeks after the Pre-Hearing Conference

Applicant's rebuttal: within 16 weeks after the Pre-Hearing Conference

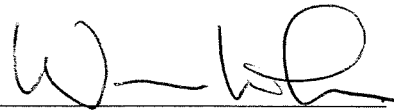
These guidelines may be varied by the presiding officer in any particular case.

Shifting burdens of proof under the Comprehensive Permit Law are described in 760 CMR 31.06. This should not prevent the parties from presenting their evidence in a comprehensive rather than piecemeal manner through prefiled testimony. For instance, in the case of a denial, although § 31.06(2) suggests that the applicant might rest its direct case after establishing only a prima facie case, it should normally present, as part of its direct case, additional evidence addressing the local concerns described in § 31.06(6). In the case of an approval with conditions, although § 31.06(3) suggests that the applicant might rest its direct case after proving only the proposal as conditioned is uneconomic, it should likewise address local concerns if they are raised by the Board in the Pre-Hearing Order. Similarly, § 31.06(9),

as a matter of the burden of proof, suggests that mitigation might be presented in rebuttal, but as a matter of presentation of evidence, mitigation should, if possible, be addressed as part of the applicant's direct case.

Adopted April 14, 2004, effective April 14, 2004.

Housing Appeals Committee

A handwritten signature in black ink, appearing to read 'W-Lohe', written over a horizontal line.

Werner Lohe
Chairman

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